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September 26, 2003

Mr. Richard Smith  
Acting Chief, Policy Division  
Consumer and Government Affairs Bureau  
Federal Communications Commission  
Room 5C-734  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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Federal Communications Commission  
Office of the Secretary

Re: Rules and Regulations Implementing the Telephone  
Consumer Protection Act of 1991  
CG Docket No. 02-278

Dear Mr. Smith:

We are writing today on behalf of Starz Encore Group LLC ("Starz") regarding the ongoing discussions between the Federal Communications Commission and the Federal Trade Commission concerning the telemarketing rules adopted by each agency. Starz is one of the largest providers of premium television programming in the United States, distributed over cable television, direct broadcast satellite, ADSL and internet protocol ("IP")-based broadband distribution systems. As such, Starz has a strong interest in the "call abandonment" provisions of the FCC's Rules and Regulations Implementing the Telephone Consumer Protection Act (47 CFR Parts 64 and 68), FCC 03-153, released July 3, 2003 ("TCPA"), and their relationship to similar provisions in the FTC's amended Telemarketing Sales Rule (16 CFR Part 310) ("TSR").

As noted by the Commission in its Report on Regulatory Coordination issued to Congress on September 8, 2003 ("Report to Congress"), the Commission's rules under TCPA "expressly permit telemarketers to send pre-recorded messages to customers with whom they have an established business relationship or who have given their express consent to receive such calls" while in contrast, the FTC's rules under TSR "prohibit such messages as abandoned calls." Starz concurs with the Commission's rationale for creating an established business relationship exemption for the delivery of pre-recorded messages and the FCC's assertion that any inconsistencies between TCPA and TSR regarding "call abandonment" rules should be resolved by requiring TSR to conform with TCPA.

Resolution of this inconsistency in favor of the FCC's position is particularly warranted in light of the fact that the Statement of Basis and Purpose issued by the FTC

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clearly indicates that its decision to ban prerecorded voice calls as “abandoned calls,” even where the calls are placed to persons with whom the caller has an established business relationship, was based at least in part on an erroneous belief that the FCC already had banned such calls. See 68 Fed. Reg. 4558, 4587 (Jan. 29, 2003) (“the fact that prerecorded sales calls may be “telemarketing” does not affect the fact that such calls are already prohibited, except with the consumer’s prior express consent, under regulations promulgated by the FCC pursuant to the TCPA.”). However, the FCC had never prohibited such prerecorded calls to established customers, as evidenced by the fact that it has since expressly determined to “**retain** the exemption for established business relationship calls from the ban on prerecorded messages.” See 68 Fed. Reg. 44144, 44158 (July 25, 2003) (emphasis added).

Starz, in partnership with cable and satellite television affiliates that carry Starz programming services, relies on telemarketing (including the delivery of prerecorded messages) as a vital communications and marketing tool to retain existing customers, and to offer existing customers new and additional services they may wish to purchase. Indeed, certain cable regulations, like the negative option prohibition (47 CFR §76.981), require that existing customers be contacted individually before being provided certain types of new services. As cable television technology and features change rapidly, telemessaging provides an effective way to communicate such improvements in service to the customers.

Starz agrees with the Commission’s position stated in its Report to Congress that: “while consumers may find prerecorded voice messages intrusive, such messages do not necessarily impose the same costs on the recipients as, for example, unsolicited facsimile messages . . . .” Starz and its cable and satellite affiliates strongly believe that their customers perceive a clear distinction between unwanted and unsolicited calls from companies with whom they have no established relationship and calls from those from whom they already receive products or services. Any “abuse inherent in the FCC’s approach” to the use of prerecorded messages, as suggested by the FTC in its Report to Congress issued September 8, 2003, is clearly mitigated by the desire of all companies (emphatically including Starz) to cultivate rather than abuse the relationships they have developed with their customers.

Further, under both the TCPA and the TSR, any customers who prefer not to receive calls from companies with whom they have established relationships need only request that their names be placed on the company’s internal do-not-call list to prevent receipt of calls (including prerecorded calls) from such company. Although Starz understands and appreciates the desire of consumers to eliminate unwanted and unsolicited phone calls, it is our opinion that the FTC’s broad rules prohibiting all prerecorded telephone messages as “abandoned calls” under TSR will have the unintended effect of preventing the same consumers from receiving valuable information from companies they loyally patronize.

For the reasons outlined above, the FCC should coordinate with the FTC to ensure that its rules regarding “abandoned calls” and the use of prerecorded messages under TSR conform to the FCC’s rules as set forth in the TCPA. The FCC, as the expert

agency governing telecommunications, should use its concerted efforts to establish to the FTC that telemessaging should be subject to the same "existing business relationship" exemption as telemarketing generally.

Respectfully submitted,

STARZ ENCORE GROUP LLC

By: \_\_\_\_\_/s/

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cc: Ms. Erica H. McMahon